

Senate Bill 130

By: Senators Mullis of the 53rd and Rogers of the 21st

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to selling
2 and other trade practices, so as to provide a short title; to provide for legislative intent; to
3 provide definitions; to establish procedures and requirements for the electronic
4 lease-purchase of goods; to provide for data and personal information protection practices;
5 to provide that persons entering into electronic lease-purchase agreements shall receive
6 certain information and have certain rights with regard to the goods that are the subject of
7 such agreements; to provide for certain requirements for merchants with regard to websites
8 and data transmission; to provide for related matters; to repeal conflicting laws; and for other
9 purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to selling and other
13 trade practices, is amended by adding a new article to read as follows:

14 "ARTICLE 23A

15 10-1-690.

16 (a) This article shall be known and may be cited as the 'Electronic Lease-Purchase of
17 Goods Act.'

18 (b) This article is for the purpose of enabling electronic commerce in lease-purchase
19 transactions and to require security measures to safeguard consumer private information,
20 including their identity and financial information.

21 10-1-691.

22 (a) As used in this article, the term:

23 (1) 'Advertisement' means a commercial message in any medium, including, but not
24 limited to, radio, print, television, telephone, facsimile, short message service (SMS)
25 messaging, and all forms of electronic or on-line advertising, that promotes, directly or
26 indirectly, a lease-purchase agreement but does not include price tags, window signs, or
27 other in-store merchandising methods.

28 (2) 'Consumer' means a natural person who is offered or enters into a lease-purchase
29 agreement.

30 (3) 'Electronic signature' means an electronic or digital method executed or adopted by
31 a party with the intent to be bound by or to authenticate a record which is unique to the
32 person using it, is capable of verification, is under the sole control of the person using it,
33 and is linked to the data in such a manner that if the data is changed, the electronic
34 signature is invalidated.

35 (4) 'Initial payment' means the amount to be paid before or at the consummation of the
36 lease-purchase agreement or the delivery of the property if delivery occurs after
37 consummation, including the rental payment; service, processing, or administrative
38 charges; the delivery fee; the refundable security deposit; taxes; mandatory fees or
39 charges; and any optional fees or charges agreed to by the consumer.

40 (5) 'Lease-purchase goods' means personal property used by a lessee primarily for
41 personal, family, or household purposes and acquired under a lease-purchase agreement
42 as defined in Code Section 10-1-681.

43 (6) 'Merchant' means a person who provides the use of property through a lease-purchase
44 agreement in the ordinary course of business and to whom a customer's initial payment
45 under the agreement is payable.

46 (7) 'Payment schedule' means the amount and timing of the periodic payments and the
47 total number of all periodic payments that the consumer will make if the customer
48 acquires ownership of the property by making all periodic payments.

49 (8) 'Periodic payment' means the total payment a consumer will make for a specific
50 rental period after the initial payment, including the rental payment, taxes, mandatory
51 fees or charges, and any optional fees or charges agreed to by the customer.

52 (9) 'Personal property' means any property that is not real property under the laws of this
53 state at the time that it is offered or made available for lease by a merchant. Such
54 property may be purchased or otherwise obtained by a merchant from any source,
55 including, but not limited to, Internet retailers, wholesalers, and individuals, including a
56 consumer as defined in this Code section.

57 (10) 'Record' means information that is inscribed on a tangible medium or that is stored
58 in an electronic or other medium and is retrievable in perceivable form, including both
59 electronic records and printed, typewritten, and tangible records. For the purposes of this

60 article, the term 'record' may also mean recorded verbal communications that include
61 identity verification.

62 (11) 'Rental payment' means rent required to be paid by a consumer for the possession
63 and use of property for a specific rental period but does not include taxes or any fees or
64 charges.

65 (b) To the extent that any definitions or requirements as used in this Code section conflict
66 with other laws of the State of Georgia, it is intended that the definitions and requirements
67 contained in this Code section shall supersede such laws for the purposes of this article
68 only.

69 10-1-692.

70 (a) A merchant who wishes to offer lease-purchase goods to a consumer may enter into
71 such a transaction electronically so long as all of the requirements of Article 23 of this
72 chapter are met in addition to the requirements of this article.

73 (b) A merchant entering into a transaction with a consumer using electronic media in any
74 form, including, but not limited to, the Internet, telephone, and SMS messaging, may obtain
75 electronic signatures or recorded verbal authorizations from the consumer to do so,
76 consistent with all requirements of Chapter 12 of this title, the 'Georgia Electronic Records
77 and Signatures Act,' and provided that the consumer's affirmative consent to electronic
78 communication is obtained.

79 (c) A merchant shall utilize the best available data protection practices in the electronic
80 lease-purchase of goods, consistent in all respects with the following:

81 (1) Data collected from a consumer shall be used only for the specific purpose for which
82 it is collected and shall be relevant and not excessive in relation to the purpose for which
83 it is collected;

84 (2) A consumer shall expressly consent to the use of electronic communication,
85 including electronic processing and retention of personal data for purposes of this article;

86 (3) A merchant shall take appropriate technical and organizational measures against
87 unauthorized or unlawful processing of personal information and against accidental loss,
88 theft, or destruction of, or damage to, a consumer's personal data;

89 (4) A merchant shall have a valid secure sockets layer (SSL) certificate that is 128 bit
90 encryption or greater and issued by a Trusted Root Certification Authority to ensure
91 communication confidentiality;

92 (5) A merchant shall utilize appropriate internal safeguards and security measures to
93 protect a consumer's private information, including, but not limited to, firewalls, unique
94 system passwords, encryption of data, utilization of antivirus software, internal restriction
95 of access to consumer data, monitoring of access to data, and maintenance of an audit file

96 of all security changes made. A merchant shall maintain an internal security policy
97 handbook detailing its policies and procedures regarding handling and storage of
98 consumer information;

99 (6) Consistent with the provisions of this subsection, a merchant's servers, including all
100 servers and other computer hardware devices needed for use by the website, including,
101 but not limited to, web servers, data base servers, reporting services, file servers, and
102 e-mail servers, shall be hosted in a reliable, physically secure facility utilizing biometrics
103 and under 24 hour monitoring. All communications to front end servers shall be done
104 with a minimum of 128 bit encryption. All communications to the customer data
105 warehouse shall have the same minimum requirements with the added security of an IP
106 based restriction. The hosting facility personnel shall not be permitted to log in to the
107 data warehouse for any reason. Any replication of the data warehouse shall be carried
108 over a secure connection to the target location. The target location shall have the same
109 minimum security requirements as the source hosting facility. All servers shall have all
110 applicable operating and security system software updates and patches applied to prevent
111 vulnerabilities;

112 (7) All source code shall be protected in a secure source code repository. Any code
113 containing server passwords and user accounts shall be in restricted areas with verbose
114 access logging. This source while in production shall be in a location that is more secure
115 from hackers;

116 (8) Any use of web cookies by a merchant shall be limited to the current web session
117 only and shall not contain any personal identifiable information about the customer.
118 Cookies may store nondisclosing details about customers in the form of unique identifiers
119 only known by the company providing the service through the Internet;

120 (9) A consumer shall be provided with information about safeguards in place designed
121 to protect personal information. It shall be clear to a consumer that all communications
122 with a merchant are being secured by 128 bit SSL encryption, and that if the consumer
123 does not see the secure lock in his or her browser, the consumer should report it
124 immediately to the merchant; and.

125 (10) A consumer shall have a means of updating personal information on file.

126 (d) A consumer shall receive a printable electronic copy of the lease-purchase agreement.
127 A consumer may elect to sign a paper copy and submit it to the merchant by facsimile or
128 postal mail rather than entering into the agreement by electronic means.

129 (e) A merchant shall provide a fully executed electronic copy of the lease-purchase
130 agreement that the consumer may print or store electronically, provided that the consumer
131 shall be responsible for ensuring that the computer or other electronic device used has

132 sufficient memory to store the agreement and any software or hardware needed for the
133 viewing, printing, and storage of the agreement.

134 (f) A merchant's Internet website shall be compatible with the most recent versions of all
135 commonly used Internet browsers, and a list of compatible browsers shall be posted on the
136 merchant's website. A consumer shall be given affirmative notification of any changes to
137 a merchant's website that may impact the consumer's ability to visit the site, contact the
138 merchant, or access the consumer's electronic copy of the lease-purchase agreement.

139 (g) A merchant shall maintain a published privacy policy, readily available to consumers
140 visiting the merchant's Internet website, which details the purposes for which a consumer's
141 personal information is being collected and the manner in which it will be used, including
142 identity verification and compliance with all applicable state and federal laws.

143 (h) A consumer shall have the right to opt out of the disclosure of personal information to
144 third parties and affiliates of a merchant, except where there is an overriding legitimate
145 reason to share the information, such as prevention or detection of a crime.

146 (i) A merchant shall utilize best industry practices to verify a consumer's identity prior to
147 entering into a lease-purchase agreement, consistent with applicable laws. At a minimum,
148 a merchant shall obtain a consumer's name, social security number, date of birth, and
149 address, and the merchant shall utilize this information as part of its identity verification
150 process.

151 (j) A merchant shall maintain at least one physical location where a consumer may return
152 lease-purchase goods, make payments, obtain information about his or her account, or other
153 lease related activities. Such location, its local telephone number, and the operating hours
154 thereof shall be disclosed on the merchant's Internet website.

155 (k) A merchant's Internet website shall clearly disclose a means whereby a consumer may
156 contact the merchant at no cost, such as a toll-free telephone number and a facsimile
157 number, and the hours during which the merchant will be available to respond.

158 (l) A merchant may elect to ship lease-purchase goods to a consumer by common carrier,
159 provided that the merchant shall develop and maintain a system for a consumer to report
160 problems regarding the sale or delivery to the merchant by telephone, facsimile, or other
161 electronic means. Methods for reporting problems shall be clearly displayed on the
162 merchant's Internet website.

163 (m) A consumer shall have the right to inspect lease-purchase goods to confirm that they
164 are in good working order upon delivery and to contact the merchant to request a suitable
165 replacement at no cost to the consumer if the lease-purchase goods are not in good working
166 order at the time of delivery.

167 (n) A consumer shall have the right to return lease-purchase goods to the merchant, either
168 to the merchant's physical location or by common carrier, at the consumer's expense, upon

169 termination of the lease-purchase agreement and consistent with the terms and conditions
170 thereof. No penalty shall be imposed for early termination of a lease-purchase agreement
171 or for the return of an item at any point. The merchant shall clearly disclose this right on
172 its Internet website and in the lease-purchase agreement.

173 (o) A merchant transacting business under this article may require a consumer to provide
174 one or more means of electronic payment in order to make the initial payment, periodic
175 payments, or rental payments. Such means of payment shall include, but not be limited to,
176 automated clearinghouse (ACH) authorization, wire transfer, credit card, or electronic
177 check.

178 (p) A merchant transacting business under this article may promote its activities through
179 advertisements or may contract with third party marketing companies to engage in
180 advertising activities on the merchant's behalf. Such third party marketing companies shall
181 be considered independent of the merchant for all purposes related to this article.

182 (q) The payment schedule shall be prominently included in the lease-purchase agreement
183 in ten-point type or larger."

184 **SECTION 2.**

185 All laws and parts of laws in conflict with this Act are repealed.